



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/153378

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 07, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on January 14, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner for the period of March 24, 2010 – February 28, 2011.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Attorney Pat DeLessio  
Legal Action of Wisconsin  
230 W. Wells St., Room 800  
Milwaukee, WI 53203

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Judy Johnson  
Public Assistance Collection Unit  
P.O. Box 8939  
Madison, WI 53708-8938

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In August, 2009, Petitioner signed a monthly rental agreement for [REDACTED] Milwaukee WI. It indicates tenancy will commence on August 1, 2009.

3. On February 17, 2010, Petitioner submitted an application for FS and health care benefits to the agency. She reported an address of [REDACTED], Milwaukee, WI. She reported she is 18 years of age and is the only person in the household. She lists her mother, MB, and father, LL, as absent parents.
4. On February 18, 2010, the Petitioner was removed from her mother's FS case because she didn't reside with her mother.
5. On March 12, 2010, the agency issued a Notice of Decision to the Petitioner at [REDACTED], [REDACTED], Milwaukee, WI informing her that her FS application was denied due to income exceeding program limits.
6. On March 24, 2010, Petitioner's mother, MB, submitted an application for FS benefits to the agency. MB reported Petitioner as part of the household. Petitioner was added back on MB's case. MB also submitted February and March, 2010 bills from WE, both addressed to the Petitioner at [REDACTED], [REDACTED], Milwaukee.
7. On March 25, 2010, the agency issued a Notice of Decision to MB at [REDACTED], [REDACTED], Milwaukee, WI 53209 informing her that her application for FS benefits for MB and Petitioner was approved. It informs her that she will receive \$45 for March 24 – 31, 2010 and \$175/month effective April 1, 2013. This notice was not returned to the agency.
8. On April 1, 2010, the agency issued a Notice of Decision to the Petitioner at [REDACTED], [REDACTED], Milwaukee, WI 53209 informing her that effective March 1, 2010, she would receive family planning services but she would not receive BC+ because she was already getting the benefit as part of another case.
9. On August 2, 2010, Petitioner's mother submitted a FS Six Month Report Form (SMRF) to the agency. She reported no changes in address or household composition. She also submitted a WE bill for July, 2010 sent to the Petitioner at [REDACTED], [REDACTED], Milwaukee and a [REDACTED] policy notice issued in June, 2010 to the Petitioner at [REDACTED], [REDACTED], Milwaukee, WI.
10. On August 7, 2010, MB's case was pended for verification of Petitioner's earned income. On August 17, 2010, the agency received employment verification from Petitioner's employer.
11. MB received FS benefits from the State of Illinois from March, 2010 – March, 2012.
12. On October 8, 2013, the agency issued a Notification of FS Overissuance and worksheets to the Petitioner at Apt. 3, [REDACTED], [REDACTED], [REDACTED] informing the Petitioner that the agency intends to recover an overissuance of FS benefits in the amount of \$2,025 for the period of March 24, 2010 – February 28, 2011.

### DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error").<sup>7</sup> C.F.R. § 273.18(b), see also, FoodShare Wisconsin Handbook, § 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, FS Handbook, § 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FS Handbook, § 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. *Id.*

The "discovery" date is "the date that the ESS [agency] became aware of the potential that an overissuance may exist." BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012). In this case, the

agency alleges the overissuance is due to client error. Specifically, it alleges that the Petitioner is liable for the overpayment as an adult member of MB's household during the overpayment period.

In a fair hearing concerning the correctness of an overpayment of benefits, including the Food Share program, the burden of proof is on the agency. The agency must demonstrate a prima facie case establishing by the preponderance of the evidence that the overpayment occurred as determined, and must be recovered from the Petitioner.

The Petitioner contends that she did not reside with her mother during the overpayment period and did not know that her mother was receiving FS benefits for her. If the Petitioner was not residing with her mother, she would not be liable for any overpayment resulting from her mother's FS case. The parties presented a rent agreement and bills to demonstrate that Petitioner resided at [REDACTED], Milwaukee during the period of the overpayment. This does not seem to be disputed. Rather, the dispute is whether MB resided with the Petitioner at that address during the overpayment period.

In support of its assertion that MB resided with the Petitioner, the agency presented the applications of the Petitioner and MB both indicating residence at [REDACTED], Milwaukee. The agency also produced a number of notices for the Petitioner and MB that were issued to each of them at [REDACTED], Milwaukee. The agency testified that the notices for MB were not returned to the agency so the presumption is that the Petitioner received notices for her case as well as for MB's case. The notices for MB's FS and healthcare benefits indicate that the Petitioner is part of the household with MB.

The agency also presented evidence that MB was receiving FS benefits from the State of Illinois for the period of March, 2010 – March, 2012.

The Petitioner testified that she did not receive her mother's notices from the agency. She testified that her mother moved to Illinois in 2009. She further testified that she was not aware that she was on her mother's FS case until she received notification from the agency of the overissuance in October, 2013. In support of her assertions, the Petitioner's landlord at [REDACTED] testified. He testified that he went to collect rent from the Petitioner and did occasional repairs in her apartment. He stated she lived alone and that he rented the apartment only to the Petitioner. He testified that he knows MB and that he went to an address several blocks from the Petitioner to pick up an application from the Petitioner's sister and MB was there. He was led to believe that MB resided there. Petitioner testified that she doesn't remember her mother being in Wisconsin as the landlord indicated. She testified that she is not aware of her mother's residence.

I conclude that the agency has met its burden of presenting a prima facie case for the overpayment against the Petitioner. The applications submitted by Petitioner and MB establish that they resided together. Children under the age of 22 living with a parent must be included in the same FS unit. FS Handbook § 3.3.1.3 and 7 CFR 273.1(b)(1). The notices that were issued by the agency to Petitioner and MB at the same address were not returned to the agency and are presumed to have been received by the Petitioner and/or MB. MB submitted applications to the agency with bills addressed to the Petitioner at [REDACTED], Milwaukee. Petitioner did not explain how MB would have obtained these bills to submit with the applications if she was living in Illinois at the time and how she would have obtained them without Petitioner's knowledge.

Petitioner did not submit sufficient evidence to rebut the agency's evidence. Petitioner's testimony that she did not receive the notices addressed to her mother at her address is not credible. I also did not find the Petitioner's testimony credible with regard to her lack of knowledge of her mother's residence, especially given the testimony of her landlord that MB was in Wisconsin and his belief that she resided in Wisconsin. The agency also produced evidence that MB used her FS benefits in Wisconsin throughout the overpayment period.

The agency introduced sufficient evidence to establish that MB was receiving benefits from Illinois and Wisconsin during the period of March 24, 2010 – February 28, 2011. All adult FS group members at the time of an overpayment are liable for repayment of any overissued FS benefits. FS Handbook § 7.3.1.2 and 7 CFR 273.11(e)(6).

I reviewed the agency's overpayment worksheets. The agency testified that the worksheets show a corrected budget for each month of the overpayment. The corrected budget reflects what the Petitioner would have been entitled to as a household of one based on the income and other information reported to the agency. The overpayment is the difference between the amount issued and the amount to which the Petitioner was entitled.

Based on the totality of the evidence, I conclude that the agency properly seeks to recover an overissuance of FS benefits in the amount of \$2,025 from the Petitioner for the period of March 24, 2010 – February 28, 2011.

### **CONCLUSIONS OF LAW**

The agency properly seeks to recover an overissuance of FS benefits in the amount of \$2,025 from the Petitioner for the period of March 24, 2010 – February 28, 2011.

**THEREFORE, it is**

**ORDERED**

That the petition for review is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

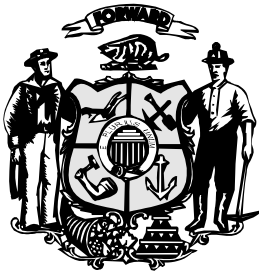
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 31st day of January, 2014

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 31, 2014.

Public Assistance Collection Unit  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[pdl@legalaction.org](mailto:pdl@legalaction.org)